

No. 288.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE FARMERS' LOAN & TRUST
COMPANY,

vs.

PETER G. LONGWORTH,
MICHAEL RASKEY and
ANNIE RASKEY, his Wife, and
RICHARD A. BELLINGER,

Appellant,

Appellees.

FILED
APR 10 1896

TRANSCRIPT OF RECORD.

Appeal from the Circuit Court of the United States,
for the District of Washington,
Northern Division.

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In the United States Circuit Court, Northern Division.

IN THE MATTER OF THE RECEIV-
ERSHIP OF THE SEATTLE LAKE
SHORE RAILROAD COMPANY,

and

PETER G. LONGWORTH, ET AL.,

Petitioners,

vs.

THE NORTHERN PACIFIC RAIL-
ROAD COMPANY, ET AL.,

Defendants.

Notice.

To the Defendants, the Seattle Lake Shore and Eastern
Railroad Company, The Northern Pacific Railroad
Company, Henry Ives, Henry Rouse and H. C. Payne,
Receivers, and to Andrew F. Burleigh, their Attorney:

You and each of you will please take notice that the
petitions in the above-named causes, will be called up for
hearing and determination before the Hon. C. H. Hanford,
Judge of the above-entitled court, at his courtroom in the
Colman Block, Seattle, King county, at the hour of ten
o'clock A. M. of the 10th day of August, or as soon there-
after as counsel can be heard.

JAMES HAMILTON LEWIS,
Attorney for Petitioners.

II.

And your petitioner, Richard A. Bellinger, informs the Court that upon a due cause of action duly stated, he did recover of and against the defendant, The Northern Pacific Railroad Company, judgment on October 24th, 1883, for \$1500, together with interest from said date at eight per cent, amounting to about \$100, together with costs in the sum of \$16.50; which said judgment is recorded in volume one, page 77 of the Register of Judgments.

III.

And your petitioners, Michael Raskey and wife, petition the Court and inform the Court that they duly recovered in a due cause of action against The Northern Pacific Railroad Company, a judgment for the sum of \$500, and costs \$220.26, with interest amounting to about \$50, which said judgment was duly recorded in volume one, page 80 of the Register of Judgments.

IV.

That all of said judgments were duly notified to the defendant, and the said suits were brought and pending previous to the defendant going into the hands of a receiver, and since said judgments have become and are liens in favor of petitioners and against the defendant.

V.

That frequent and constant demands for the payment of the said judgments have been made upon the defendant, but the same have been wholly ignored, and the said receivers of the defendant wholly ignore the same.

VI.

That the reports of The Northern Pacific Railroad Company and the said receivers show that the said road is earning complete and sufficient sums to defray all expenses of its operation, leaving a balance due to the credit of the said receivers to be applied to the payment of such debts as are matured and due; that from the report of the said Northern Pacific receivers, made in their last report submitted to the Court, said report being filed in the city of Milwaukee and in the city of St. Paul, there appears a large sum, to-wit, more than \$180,000 as a net return, after the payment of expenses, for the first quarter after April 1st, 1894; that the said report further discloses that the said company has assets far in excess of all debts and liabilities, to the amount of, in the said excess, of three and a half million dollars; that notwithstanding such report, the said receivers refuse to pay the said judgments or any part thereof.

VII.

That the judgments herein referred to are hereby evidenced by a certified transcript from this Hon. Court marked Exhibits A, B, and C.

Wherefore, petitioners pray that your Honor will order the said auditor of the said receivers to audit and pay said judgments to these petitioners within the period of not more than thirty days; that upon the failure so to do your Honor will permit petitioners to issue execution out of this Hon. Court, and the same to be levied against the lands and tenements and properties of the said defendant

sufficient to pay the said judgments, costs and interest. And your petitioners will ever pray.

JAS. HAMILTON LEWIS,
Attorney for Petitioners.

Copy of within notice received and due service of the same acknowledged this 9th day of August, 1894.

A. F. BURLEIGH,
Attorney for S. L. S. & E. Ry.

[Endorsed]: Petition filed Aug. 11, 1894, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

In the Circuit Court of the United States, for the District of Washington, Northern Division.

THE FARMERS' LOAN AND TRUST }
COMPANY, }
vs. } No. 337.
THE NORTHERN PACIFIC RAIL- }
ROAD COMPANY, ET AL. }

Order.

And now on this 16th day of August, 1894, on consideration of the petition of Peter G. Longworth, Richard Bellingier, and Michael Raskey and wife, it is ordered, by the Court that the receivers of The Northern Pacific Railroad do, within the next thirty days, pay the several amounts due to the petitioners upon the judgments in their favor, or deposit with the Clerk of this court, receiver's certificates for said amounts. Such certificates to be redeemed

ble in cash in six months from the date of issue and to bear interest at the rate of eight per cent per annum from date until paid.

C. H. HANFORD,

Judge.

[Endorsed]: Order filed August 16th, 1894. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

In the Circuit Court of the United States, for the District of Washington, Northern Division.

THE FARMERS' LOAN AND TRUST	}	No. 337.
COMPANY,		
vs.		
THE NORTHERN PACIFIC RAIL-	}	
ROAD COMPANY, ET AL.		

Motion for Order Extending Time.

Comes now the above-named Farmers' Loan and Trust Company and moves the Court for an extension of thirty days' time from the 16th day of September, 1894, in which to show cause why that certain order made in the above court and cause on August 16, 1894, wherein it was ordered that the receivers of said Northern Pacific Railroad Company do within thirty days from the date of said order pay to Peter G. Longworth, Richard A. Bellinger and Michael Raskey and wife, the amount of certain judgments in their favor, or deposit with the Clerk of said court, receivers' certificates to be redeemable in cash in six months from the date of issue, and to bear interest at the

rate of eight per cent per annum, should be vacated or modified so as not to require the issuance of said receivers' certificates, for the following reasons among others:

That no proceedings were ever had upon which said order is based wherein said Farmers' Loan and Trust Company was or is a party, or was served with any notice of the application for said order or was ever given any notice of the proceeding upon which the said order was based, because said order was made without the said Farmers' Loan and Trust Company being in any manner a party to said proceedings and because it never consented to the same, and because said order is in violation of the prior vested contract rights of the said Farmers' Loan and Trust Company, and tends to impair the value of its mortgage security on all the properties of said Northern Pacific Railroad Company, subsisting at and prior to the date of said order. This motion is based upon the record in said matter and upon the affidavit hereto annexed.

STRUNE, ALLEN, HUGHES & McMICKEN,

Attorneys for the Farmers' Loan and Trust Company.

*In the Circuit Court of the United States for the District of
Washington, Northern Division.*

THE FARMERS' LOAN AND TRUST COMPANY,	}	No. 337.
vs.		
THE NORTHERN PACIFIC RAIL- ROAD COMPANY, ET AL.		

Affidavit of Maurice McMicken.

State of Washington,)
County of King.) ss.

Maurice McMicken being duly sworn says he is one of the attorneys of the above-named Farmers' Loan and Trust Company; that said company is a corporation duly organized and existing under the laws of the State of New York; that prior to the making of said order and the incurring of the liabilities upon which the several judgments of said Peter G. Longworth, Richard A. Bellinger and Michael Raskey and wife were rendered, the said Northern Pacific Railroad Company executed and delivered to said Farmers' Loan and Trust Company its certain mortgages, conveying all and singular the properties, real and personal, and of every character and nature whatsoever, of the said Northern Pacific Railroad Company, to secure the payment of the bonds of said Railroad Company issued, to the amount of many millions of dollars, and which said mortgages are not more than adequate security for the payment of the same; that if, as affiant is informed and believes, the said order remains and the

said receivers are required agreeably thereto to issue certificates, the same will become a precedent for a large number of claims and demands of a similar character, and that the effect thereof is to impair and prejudice the said mortgage securities, and for that reason said Trust Company asks that it be afforded an opportunity to show cause why the said order should be vacated or modified.

MAURICE McMICKEN.

Subscribed and sworn to before me this 12th day of September, 1894.

[Notarial Seal]

H. J. RAMSEY,

Notary Public in and for the State of Washington, Residing at Seattle.

[Endorsed]: Motion and Affidavit. Filed Sept. 15, 1894, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

In the Circuit Court of the United States for the District of Washington, Northern Division.

THE FARMERS' LOAN AND TRUST
COMPANY, ET AL.,

vs.

THE NORTHERN PACIFIC RAIL-
ROAD COMPANY, ET AL.

} No. 337.

Order Extending Time to Show Cause.

On motion of said Farmers' Loan and Trust Company for an extension of thirty (30) days time from September 16th, 1894, in which to show cause why that certain order

made in the above court and cause August 16th, 1894, ordering that the receivers of said Northern Pacific Railroad Company within thirty days from said date pay Peter Longworth, Richard A. Bellinger and Michael Raskey and wife the amount of certain judgments in their favor, or deposit with the Clerk of said court, receivers' certificates to be redeemable in six months from the date of their issue, it is ordered that such extension of time to show cause be and the same is hereby given until October 3rd, 1894, and that all further proceedings in said matter be suspended until the further order of the Court.

Dated September 17th, 1894.

C. H. HANFORD,
Judge.

[Endorsed]: Order Extending Time to Show Cause. Filed Sept. 17, 1894, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

*In the Circuit Court of the United States, for the District of
Washington, Northern Division.*

THE FARMERS' LOAN AND TRUST	}
COMPANY,	
	Plaintiff,
vs.	
THE NORTHERN PACIFIC RAIL-	}
ROAD COMPANY, ET AL.,	
	Defendants.

Motion to Vacate Order.

To the above-named plaintiff, and its attorneys, Messrs. Struve, Allen, Hughes & McMicken:

You, and each of you will please take notice, that the

petitioners herein, Peter Longworth, Richard Bellinger and Michael Raskey, by their attorneys, Stratton, Lewis & Gilman, will, on the 20th day of November, 1894, at the hour of ten o'clock A. M., on said date, or as soon thereafter as counsel can be heard, call up for hearing and determination, before the Hon. C. H. Hanford, Judge of the above court, at his courtroom in the Colman Block, Seattle, Washington, plaintiff's motion to set aside the order of the Court heretofore entered, granting judgment and precedence in the case of Longworth et al., against The Northern Pacific Railroad Company.

Nov. 16, 1894.

STRATTON, LEWIS & GILMAN,

Attorneys for Petitioners.

[Endorsed]: Notice. Filed Nov. 19, 1894, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

Copy of within notice received and due service of the same acknowledged this 16th day of Nov., 1894.

STRUVE, ALLEN, HUGHES & McMICKEN,

Attorneys for Plaintiffs.

*In the United States Circuit Court, for the District of Wash-
ington, Northern Division.*

<p>THE FARMERS' LOAN AND TRUST COMPANY,</p>	Complainant,	}	No. 337.
vs.			
<p>THE NORTHERN PACIFIC RAIL- ROAD COMPANY ET AL.,</p>	Defendants.	}	

Order Denying Motion to Vacate, etc.

This cause having come on duly and regularly to be heard upon the motion of the complainant, the Farmers' Loan and Trust Company, to vacate and set aside the order made by the Court herein on the 16th day of August, 1894, directing that the receivers of The Northern Pacific Railroad Company, within thirty days from the date of said order, pay the amounts of the judgments of Peter G. Longworth, Michael Raskey and Annie Raskey, his wife, and R. A. Bellinger, against The Northern Pacific Railroad Company, or deposit with the Clerk of this court, receivers' certificates for the amounts of said judgments, such certificates to be redeemed in cash in six months from the date of issue, and to bear interest at the rate of eight per cent per annum from date until paid, and the Court having heard the arguments of counsel of the parties hereto thereon, and having taken the same under advisement, and being now fully advised in the premises,

It is ordered that said motion to vacate and set aside

said order be, and the same hereby is denied; and it is ordered that said order be modified in this, to-wit, that the receiver of The Northern Pacific Railroad Company be directed, on or before the 31st day of December, 1895, to pay the amount of said judgments, together with costs, without interest, in cash; and Andrew F. Burleigh, receiver of the defendant, The Northern Pacific Railroad Company, is hereby directed and ordered to pay to the Clerk of this court, on or before the 31st day of December, 1895, the amounts of the judgments, together with costs, in cash, but without interest, of Peter G. Longworth, Michael Raskey and Annie Raskey, his wife, and R. A. Bellinger; the judgment of Peter G. Longworth being for the sum of three thousand dollars (\$3000.00) and costs of suit; the judgment of Michael Raskey and Annie Raskey, his wife, being for five hundred dollars (\$500.00) and costs of suit, and the judgment of R. A. Bellinger being for fifteen hundred dollars (\$1500.00) and costs of suit.

To the foregoing order, and each and every part thereof, complainant by its counsel duly excepts and its exception is allowed by the Court.

Done in open court this 18th day of December, A. D., 1895.

C. H. HANFORD,
Judge.

[Endorsed]: Order Filed Dec. 18, 1895, in U. S. Circuit Court. A Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

*In the Circuit Court of the United States, for the District of
Washington, Northern Division.*

In Equity.

THE FARMERS' LOAN AND TRUST
COMPANY, a Corporation of the
State of New York,

Complainant,

vs.

NORTHERN PACIFIC RAILROAD
COMPANY, and ANDREW F. BUR-
LEIGH, as Receiver of The Northern
Pacific Railroad Company,

Defendants.

No. 337.

**Order Granting Leave to Farmers' Loan and
Trust Co. to File Answer.**

In the matter of the Petition of Peter G. Longworth,
Richard A. Bellinger and Michael Raskey.

Now, on this 6th day of January, 1896, in open court,
comes The Farmers' Loan and Trust Company, by its so-
licitors, Struve, Allen, Hughes & McMicken, and applying
to the Court to be permitted to make and file its interven-
ing answer herein, as of the date of October 10th, 1894, to
the petition of the said petitioners, Peter G. Longworth,
Richard A. Bellinger and Michael Raskey in the above
matter, upon which the order of this Court of August 16th,
1895, was based, directing that the receivers of The North-
ern Pacific Railroad Company, within thirty days next

after said 16th day of August, pay the said several amounts alleged to be due on the judgments in their favor, or deposit with the Clerk of this court, receivers' certificates as in said order required, to the end that the issues argued by counsel and upon which said matter was heard and determined by the Court may fully appear in the pleadings and record of this matter, viz., as to whether the respective claims of said petitioners are operating expenses of said Northern Pacific Railroad Company of such a character as to have precedence over and be a superior lien upon the income of the said Northern Pacific Railroad Company in the hands of its receivers over the lien of the mortgages of said Northern Pacific Railroad Company to the Farmers' Loan and Trust Company, as trustee in this proceeding, as is more fully set forth in the answer hereby sought to be filed; and counsel having been heard on behalf of said application, and L. C. Gilman, of counsel for said petitioners, having been heard in opposition thereto, and the Court being fully advised in the premises, for the reasons above set forth grants said application, and it is ordered that the said Farmers' Loan and Trust Company be and it is permitted at this time to file its answer herewith presented as and of the 10th day of October, 1894, and the same is filed accordingly.

C. H. HANFORD,
Judge.

[Endorsed]: Order Granting Leave to file Answer *unum pro tunc*. Filed Jan. 20, 1896, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By E. A. Colvin, Deputy.

*In the United States Circuit Court, District of Washington,
Northern Division.*

PETER G. LONGWORTH, RICHARD	}
A. BELLINGER and MICHAEL	
RASKEY,	} Petitioners,
	vs.
HENRY IVES, HENRY ROUSE and	} Respondents.
H. C. PAYNE,	

Intervention of Farmers' Loan and Trust Company.

To the Honorable Judges of the United States Circuit
Court, District of Washington, Northern Division:

In obedience to the permission of the Court upon its application therefor heretofore given, the intervening petitioner, The Farmers' Loan and Trust Company, appears in the above proceeding and makes its answer to the petition of said petitioners and shows cause why the order of said Court made and entered in said proceeding on the 16th day of August, 1894, in favor of the said petitioners, whereby it was by the Court ordered that the receivers of The Northern Pacific Railroad Company, within thirty days next after said 16th day of August, pay the several amounts alleged to be due the said petitioners upon judgments in their favor, or deposit with the Clerk of this court, receivers' certificates, as in said order required, answereth as follows:

And thereupon your intervening petitioner complains and says:

I.

That your petitioner is a corporation bearing the name of The Farmers' Loan and Trust Company, duly created under the laws of the State of New York, and as such corporation fully authorized to hold in trust the property conveyed to it in trust as hereinafter stated.

II.

The defendant, Northern Pacific Railroad Company, herein called Mortgagor Company, is a corporation created and existing under certain laws of the United States, to-wit, an act of the congress of the United States, entitled "An Act Granting Lands to aid in the Construction of a Railroad and Telegraph Line from Lake Superior to Puget Sound, on the Pacific Coast, by the Northern Route," approved by the President of the United States on the 2nd day of July, A. D. 1864, and the amendments to the said act, and joint resolutions of the congress of the United States supplemental thereto, and certain acts of the legislatures of the States of Minnesota, Wisconsin and Oregon. And your orator begs leave to refer to each and every of said acts and joint resolutions and make them a part of this petition in intervention the same as if fully incorporated herein.

III.

That pursuant to the said several acts and joint resolutions above referred to, defendant Mortgagor Company has constructed and now maintains and operates its mail line of railroad and Cascade Branch and telegraph lines from a point on Lake Superior, in the State of Wisconsin,

at or near the city of Ashland, to its termini at Tacoma, on Puget Sound, in the State of Washington, and at Portland, in the State of Oregon.

IV.

That the defendant, the Mortgagor Company, under and by virtue of said acts of congress of the United States, and amendments and joint resolutions, and by virtue of its said incorporation became and is the owner of large quantities of land granted to it by the said congress of the United States, and now seized and possessed of said lands, and of an extensive mileage of railroads with their rolling stock, equipments and appurtenances, all of which are subject to the liens of certain mortgages as hereinafter stated.

V.

That on the 20th day of November, 1883, defendant Mortgagor Company, for the purpose of securing the payment of a series of bonds of said company, executed, acknowledged and delivered, as party of the first part, to your intervening petitioner, the Farmers' Loan and Trust Company, as trustee, its mortgage or deed of trust known as its General Second Mortgage, wherein and whereby it conveyed and transferred to your intervening petitioner, and to its successor, or successors and assigns, all the following property and premises, to-wit:

All and singular, the railroad and telegraph line or lines of the said Mortgagor Company, constructed, being constructed or thereafter to be constructed, including its main line and all branch lines and all lands, tenements and hereditaments acquired or appropriated or thereafter to be acquired or appropriated for any purposes connected

with the said main line,, or branches, and everything appertaining to or incident to the said main line or branches, or used or designed to be used or enjoyed in connection therewith, together with all rolling stock and equipment then and thereafter to be acquired, and all lands contained within the said grants by the congress of the United States, or otherwise acquired, owned or possessed by said Mortgagor Company or thereafter to be so acquired, and all privileges, immunities and franchises connected with or in any wise relating to said lines of railroad and lines of telegraph, or thereafter to be acquired or connected therewith, and all other corporate franchises of every nature, owned by or connected with said Mortgagor Company, including its franchises to be a corporation, and all and singular all other property or rights of property of every kind and nature whatsoever, then or thereafter to be acquired by said Mortgagor Company wheresoever situate, held or used by it, together with all the income, earnings and profits of said main line and branches of said railroad company, and of all and every of the property of the said railroad company of every nature and description as will more fully and completely appear by said mortgages to which reference is made.

VI.

The said General Second Mortgage was made and was therein expressly recited as made, subject only to the prior lien of the General First Mortgage of said Mortgagor Company bearing date January 1st, 1881.

VII.

The said General Second Mortgage was made to secure a series of General Second Mortgage bonds dated Decem-

ber 1st, 1883, each for the sum of one thousand dollars, aggregating twenty million dollars of principal, payable on the first day of December, 1933, in United States gold coin, and interest thereon in the meantime, at the rate of six per cent per annum, payable in like gold coin, semi-annually, on the first day of April, and on the first day of October in each year, upon presentation and surrender of certain coupons or interest warrants thereto annexed, as they might severally respectfully mature. Upon each of said bonds there was a certificate by said, The Farmers' Loan and Trust Company, stating that said bond was secured by the mortgage therein mentioned, being the General Second Mortgage above described, all of which by the said bonds and each of them, and the said certificates thereon, to which your petitioner for greater certainty refers will more fully and at large appear.

VIII.

That said General Second Mortgage was and is the proper act and deed of the said Mortgagor Company, by it authorized, made and delivered in all respects in conformity with law; that the same was duly acknowledged and recorded in the office of the Secretary of the Interior at Washington, District of Columbia, and the same is a valid conveyance for the purposes therein stated. That the trusts therein and thereby created were duly accepted by said Farmers' Loan and Trust Company, the intervening petitioner, before the recording of the said General Second Mortgage as aforesaid.

IX.

That under and by virtue of the provisions of said General Second Mortgage there was duly certified in the form

set forth therein, 20,000 of the bonds therein mentioned and described in said mortgage, and to secure which the same was executed and delivered as aforesaid, aggregating \$20,000,000 of principal, and a large number of said bonds, to-wit, 19,216 are outstanding and existing obligations on the part of said Mortgagor Company, and the remainder, to-wit, 784 bonds have been retired by the action of the sinking fund, and are now held in said sinking fund under the provisions of said mortgage.

X.

That afterwards and on the first day of December, 1887, for the purpose of securing the payment of a further series of bonds of said Mortgagor Company, said Mortgagor Company executed, acknowledged and delivered to your intervening petitioner, The Farmers' Loan and Trust Company, as trustees, its certain other mortgage or deed of trust known as its General Third Mortgage, wherein and whereby it conveyed and transferred to your orator, and to its successor or successors and assigns, all the following premises and property:

All and singular, the railroad and telegraph line or lines of the said Mortgagor Company, constructed, being constructed or thereafter to be constructed, including its main line and all branch lines and all the lands, tenements and hereditaments acquired or appropriated or thereafter to be acquired or appropriated for any purposes connected with the said main line, or branches, and everything appertaining to or incident to the said main line or branches, or used or designed to be used or enjoyed in connection therewith, together with all rolling stock and equipments then and thereafter to be acquired,

and all lands contained within the said grants by the Congress of the United States, or otherwise acquired, owned or possessed by said Mortgagor Company, or thereafter to be so acquired, and all privileges, immunities and franchises connected with or in any wise relating to said lines of railroad and lines of telegraph, or thereafter to be acquired or connected therewith, and all other corporate franchises of every nature, owned by or connected with said Mortgagor Company, including its franchise to be a corporation, and all and singular, all other property or rights of property of every kind and nature whatsoever, then or thereafter to be acquired by said Mortgagor Company wheresoever situate, held or used by it, together with all the income, earnings and profits of said main line and branches of said railroad company, and of all and every of the property of the said railroad company of every nature and description as will more fully and completely appear by said mortgages to which reference is made.

XI.

The said General Third Mortgage was made as subject to the lien of said prior mortgages above recited, and the bonds issued and to be issued thereunder.

XII.

The said General Third Mortgage was made to secure a series of General Third Mortgage bonds, dated December 1st, 1887, for one thousand dollars each, aggregating twelve millions of dollars of principal, payable on the first day of December 1937, in United States gold coin, and interest thereon in the meantime at the rate of six per cent per annum, payable in like gold coin semi-annu-

ally on the first days of June and December in each year, as by the coupons thereto attached appears. Each of said bonds was duly certified and recited that they were secured by said General Third Mortgage.

XIII.

The said General Third Mortgage was the proper act and deed of said Northern Pacific Railroad Company made and delivered in conformity with law, and was duly recorded in the office of the Secretary of the Interior at Washington, in the District of Columbia, and the same is a valid conveyance for the purposes therein stated. The trusts therein and thereby created were accepted by your intervening petitioner, The Farmers' Loan and Trust Company before the recording of the said General Third Mortgage as aforesaid. That under and by virtue of the provisions of the said General Third Mortgage there was duly certified 11,461 of the bonds mentioned and described in said mortgage, and to secure which the same was executed and delivered, aggregating \$11,461,000 of principal; and all of said bonds so certified are outstanding and existing obligations on the part of said Northern Pacific Railroad Company.

XIV.

That afterwards and on December 2nd, 1889, the said Mortgage Company, Northern Pacific Railroad Company, for the purpose of securing the payment of a further series of bonds of said company, executed, acknowledged and delivered to the Farmers' Loan and Trust Company, as trustee, your intervening petitioner, its certain other mortgage or deed of trust known as its Consolidated Mort-

gage, wherein and whereby it conveyed and transferred to said Trust Company, its successors and assigns all the following property and premises, to-wit:

All and singular the railroad and telegraph line or lines of said Mortgagor Company, constructed, being constructed or thereafter to be constructed, including its main line and all branch lines and all the lands, tenements and hereditaments acquired or appropriated or thereafter to be acquired or appropriated for any purposes connected with the said main line, or branches, and everything appertaining to or incident to the said main line or branches, or used or designed to be used or enjoyed in connection therewith, together with all rolling stock and equipments then and thereafter to be acquired, and all lands contained within the said grants by the congress of the United States, or otherwise acquired, owned or possessed by said Mortgagor Company or thereafter to be so acquired, and all privileges, immunities, and franchises connected with or in any wise relating to said lines of railroad and lines of telegraph, or thereafter to be acquired or connected therewith, and all other corporate franchises of every nature, owned by or connected with said Mortgagor Company, including its franchise, to be a corporation, and all and singular all other property or rights of property of every kind and nature whatsoever, then or thereafter to be acquired by said Mortgagor Company wheresoever situate, held or used by it, together with all the income, earnings, and profits of said main line and branches of said railroad company, and of all and every of the property of the said railroad company of every nature and description as will more fully and more com-

pletely appear by said mortgage to which reference is made.

XV.

That said Consolidated Mortgage was so made as aforesaid to secure a series of consolidated mortgage bonds of said Northern Pacific Railroad Company, dated December 2nd, 1889, each for the sum of one thousand dollars, not to exceed in the aggregate \$160,000,000 payable on the first day of December, 1987, in United States gold coin, with interest thereon in the meantime at a rate not to exceed five per cent per anum, payable in like coin semi-annually on the first days of June and December in each year, each of which bonds was certified that it was one of the bonds secured by and named in said Consolidated Mortgage.

XVI.

That said Consolidated Mortgage was and is the proper act and deed of said Northern Pacific Railroad Company, by it authorized, made, and delivered in all respects in conformity with law; and the same was duly recorded in the office of the Secretary of the Interior, at Washington, in the District of Columbia, and the trusts therein created were duly accepted by said Trust Company.

XVII.

That under the provisions of said Consolidated Mortgage your orator, upon being requested so to do, certified, in the form set forth therein, 62,443 of the bonds mentioned and described in said mortgage, and to secure the same was executed and delivered as aforesaid, aggregating \$62,443,000 of principal; that a large number of said bonds, so far as this intervening petitioner knows, all of

them are outstanding and existing obligations on the part of The Northern Pacific Railroad Company.

XVIII.

That default having been made in the payment of interest due on said Consolidated Mortgage for June 1st, 1893, and the said Mortgagor Company, Northern Pacific Railroad Company, having become insolvent, such proceedings were had that in the above-entitled court on or about the 30th day of October, 1893, an order was duly made and entered whereby it was ordered that Thomas F. Oakes, Henry C. Payne and Henry C. Rouse, theretofore appointed receivers of said Northern Pacific Railroad Company and its property, were duly appointed receivers in that certain cause wherein the Farmers' Loan and Trust Company, was complainant and said Northern Pacific Railroad Company et al., were defendants, that said respondents, receivers, qualified and entered upon their duties as such, and that their duly appointed successor, A. F. Burleigh, is now such receiver administering said property.

XIX.

That in the above-entitled matter wherein said order of August 16, 1894, was entered for the payment of the demands of said petitioners or the issuance of receivers' certificates on failure of such payment, your said intervening petitioner, The Farmers' Loan and Trust Company, was not made a party, nor was it in any manner notified of said proceedings, nor was it present in said court and it did not in any manner consent to said order or waive notice or right to be heard therein.

XX.

It admits that on the 30th day of October, 1893, a judgment in the sum of \$3,000 with costs of \$164.69 was recovered in favor of said petitioner, Peter G. Longworth, in this court, in a certain action wherein said Peter G. Longworth was plaintiff and said Northern Pacific Railroad Company was defendant; that said judgment was recorded as in said petition set forth on the 30th day of October, 1893, but avers that said judgment was recovered in a certain action commenced in said court June 19, 1891, upon a verdict therein rendered October 16, 1893, for personal injuries resulting to said Longworth as a passenger on the passenger train of said Northern Pacific Railroad Company occurring through the negligence of said Northern Pacific Railroad Company.

XXI.

It admits that said petitioner Richard A. Bellinger recovered the judgment of \$1500 and costs on October 24, 1893, set forth in said petition, and that said judgment was recorded as alleged, but avers that said judgment was recovered in an action upon a contract between said Bellinger and The Northern Pacific Railroad Company for the payment of certain sums and the performance of other conditions in settlement of personal injuries received by him as an engineer of The Northern Pacific Railroad Company, January 16, 1888, through the carelessness of said company.

XXII.

It admits that Michael Raskey and his wife recovered judgment as in the petition alleged against The Northern

Pacific Railroad Company for \$500 and for \$220.26 costs and interest as set forth in the petition and that the same was recorded as set forth, but avers that said judgment was recovered in an action begun in this court for a personal injury inflicted upon the minor child of said Raskey and wife at a date shortly prior to April 1, 1893, to-wit, October 17, 1892, through the negligence in the running of a railway train of said Northern Pacific Railroad Company in King county, State of Washington.

XXIII.

Said Northern Pacific Railroad Company is and ever since the first day of August, 1893, has been insolvent, and by reason of its insolvency was placed in charge of the receivers of this court as hereinbefore alleged, and still continues under such receivership; that the said mortgages and the property therein conveyed are inadequate security for the payment of the indebtedness of the Farmers' Loan and Trust Company thereby sought to be secured; that the said judgments of said petitioners are not expenses incurred in the operation of the said Northern Pacific Railroad Company, and are not entitled to priority of the claim secured by the said mortgages, but are inferior thereto, and that all the funds, moneys and other property in the hands of the receiver of said Northern Pacific Railroad Company, after the payment of the costs of said receivership are subject to the lien of the said Mortgages hereinbefore set forth and if payment of said judgment and costs are made by the said receiver the same will and must be paid from funds in his possession in equity belonging to the said, The Farmers' Loan and Trust Company, in

trust as aforesaid for the payment of the bonds secured by said mortgages.

That neither of said claims representing said judgments are preferred claims; that neither thereof are or is a necessary or proper operating expense connected with the said Northern Pacific Railroad Company; and neither of said claims is or constitutes a prior lien upon the income of said railroad company in the hands of the receiver, and neither thereof is entitled to payment out of the funds in the custody or control of the receiver in preference to the mortgage claims and lien of the Farmers' Loan and Trust Company, as trustee aforesaid, under said mortgages, and the allowance of said judgment claims out of the income of said Northern Pacific Railroad Company, in the hands of said receiver is an impairment of the vested right and lien of the said Trust Company as trustee under said mortgage.

Wherefore, the said Farmers' Loan and Trust Company asks that the said order heretofore made in said matter allowing said claims be vacated and set aside and the prayer of said petition as to each of said claims be denied and the said petition be dismissed.

STRUVE, ALLEN, HUGHES & McMICKEN,
Solicitors for Farmers' Loan and Trust Company.

United States of America,)
District of Washington,) ss.
County of King.)

John B. Allen being first duly sworn, on oath deposes and says, that he is one of the solicitors for the intervening petitioner herein, The Farmers' Loan and Trust Com-

pany, in the above-entitled action; that he had read the foregoing intervening petition, knows the contents thereof and believes the same to be true; that he makes this affidavit for and in behalf of the said intervening petitioner, The Farmers' Loan and Trust Company, because the same is a corporation, and there is not officer of said corporation within the District.

JOHN B. ALLEN.

Subscribed and sworn to before me this 6th day of January, A. D. 1896.

[Notarial Seal]

THEO. FORBY,

Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Answer of Farmers' Loan and Trust Co. to Petition of Petitioners. Filed Oct. 10, 1894, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

*In the Circuit Court of the United States, for the District of
Washington, Northern Division.*

In Equity.

THE FARMERS' LOAN AND TRUST
COMPANY, a Corporation of the
State of New York,

Complainant,

vs.

NORTHERN PACIFIC RAILROAD
COMPANY and ANDREW F. BUR-
LEIGH, as Receiver of The Northern
Pacific R. R. Co.,

Defendants.

No. 337.

Petition for Appeal.

In the matter of the petition of Peter G. Longworth,
Richard A. Bellinger and Michael Raskey.

The above-named complainant, conceiving itself ag-
grieved by the order duly made and entered on the 18th
day of December, 1895, in the above-entitled cause, where-
in and whereby an order of said court in said cause made
and entered on the 16th day of August, 1894, directing the
receivers of said Northern Pacific Railroad Company,
within thirty days from that date to pay the amount of the
judgments of said Peter G. Longworth, Michael Raskey
and Annie Raskey, his wife, and R. A. Bellinger, against
said Northern Pacific Railroad Company, or deposit with
the Clerk of this court, receivers' certificates of the amount
of said judgments, was modified so that the receiver of

The Northern Pacific Railroad Company was directed on or before the 31st day of December, 1895, to pay the amount of said judgments, together with costs in cash and wherein and whereby said Court refuses to vacate and set aside the said order of August 16th, 1894, does hereby appeal from the order and decree of said 18th day of December, 1895, to the United States Circuit Court of Appeals, of the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herein, and it prays that this appeal may be allowed, and that a transcript of the record and papers and proceedings upon which said order was made duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Ninth Circuit.

STRUVE, ALLEN, HUGHES & McMICKEN,

Solicitors for Complainant, The Farmers' Loan
and Trust Company.

The foregoing claim of appeal is allowed.

C. H. HANFORD,

District Judge.

Dated January 20th, 1896.

[Endorsed]: Claim of Appeal. Filed Jan. 20, 1896, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By E. A. Colvin, Deputy.

In the Circuit Court of the United States, for the District of Washington, Northern Division.

In Equity.

THE FARMERS' LOAN AND TRUST COMPANY, a Corporation of the State of New York,	}	No. 337.
Complainant,		
vs.		
NORTHERN PACIFIC RAILROAD COMPANY and ANDREW F. BUR- LEIGH, as Receiver of The Northern Pacific R. R. Co.,	}	
Defendants.		

Assignment of Errors.

In the matter of the Petition of Peter G. Longworth, Richard A. Bellinger and Michael Raskey.

Now, on this 20th day of January, 1896, comes the said complainant, The Farmers' Loan and Trust Company, by Struve, Allen, Hughes & McMicken, its solicitors, and says that the order and decree in said cause made and entered on the 18th day of December, 1895, is erroneous and against the just rights of the said complainant for the following reasons:

I. Because the order made August 16th, 1894, was made without the consent of the complainant, and without any notice to complainant or any appearance on its part.

II. Because it appears by the pleadings and record in said cause that the funds out of which the said receiver

was ordered to pay the amount of said judgments were subject to the prior and superior lien of the mortgage bonds and interest thereon mentioned and described in complainant's answer to the petition of said petitioners, Peter G. Longworth, Michael Raskey and Annie Raskey, his wife and R. A. Bellinger.

III. Because as the pleadings and record in said matter show, the several judgments, to-wit, the judgment of said Peter G. Longworth, for the sum of three thousand dollars, and costs, the judgment of said Michael Raskey and Annie Raskey for five hundred dollars and costs, and the judgment of R. A. Bellinger for fifteen hundred dollars and costs, nor either of them, or any part of them, is a preferred claim or an operating expense of said Northern Pacific Railroad Company, and because said claims nor any of them are entitled to be paid out of the income of the said Northern Pacific Railroad Company in the hands of the said receiver Andrew F. Burleigh, because it appears by the record in said cause that the lien of the mortgages given to the said complainant by The Northern Pacific Railroad Company is a primary lien upon all funds and moneys now or hereafter to be or come into the custody of said receiver.

IV. Because it appears by the pleadings and record in this cause that said Northern Pacific Railroad Company is insolvent and that all of its property and income are pledged to the payment of the bonds and interest secured by the mortgages to said complainant, The Farmers' Loan and Trust Company, mentioned and described in the pleadings in said matter.

V. Because it appears that the liabilities upon which each of said judgments was obtained were not contract obligations on the part of said Northern Pacific Railroad Company, nor did they or any of them constitute a legal or equitable claim or lien upon any of the property or moneys of said Northern Pacific Railroad Company in the custody of the said receiver.

VI. Because each of said judgments is founded upon a liability in tort on the part of The Northern Pacific Railroad Company, occurring long prior to the appointment of a receiver of its properties.

VII. Because the Court is not authorized to divert the income and money of the said Northern Pacific Railroad Company in the hands of its receiver from the payment of the mortgage obligations to the complainant for which they are pledged, to the payment of the liabilities arising from the negligence of The Northern Pacific Railroad Company in the operation of its road prior to the creation of said receivership.

Wherefore, the complainant prays that the said order and decree may be reversed, and that the said Court may be directed to enter a decree in accordance with the prayer of the answer of complainant, The Farmers' Loan and Trust Company, to the petition of said Peter G. Longworth, Michael Raskey and R. A. Bellinger, petitioners as aforesaid.

STRUVE, ALLEN, HUGHES & McMICKEN,
Solicitors for Complainant, The Farmers' Loan and Trust
Company.

Copy of within assignment of errors received and due service of same acknowledged this 20th day of January, 1896.

JAMES HAMILTON LEWIS,
STRATTON, LEWIS & GILMAN,

Solicitors for Petitioners, Peter G. Longworth, Richard A. Bellinger, Michael Raskey and Annie Raskey, his Wife.

[Endorsed]: Assignment of Errors. Filed Jan. 20, 1896, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By E. A. Colvin, Deputy.

*in the Circuit Court of the United States, for the District of
Washington, Northern Division.*

In Equity.

<p>THE FARMERS' LOAN AND TRUST COMPANY, a Corporation of the State of New York,</p>	}	Complainant,
vs.		
<p>NORTHERN PACIFIC RAILROAD COMPANY, and ANDREW F. BUR- LEIGH, as Receiver of The Northern Pacific R. R. Co.,</p>	}	Defendants.

No. 337.

Bond on Appeal to Peter G. Longworth.

In the matter of the Petition of Peter G. Longworth, Richard A. Bellinger and Michael Raskey.

Know All Men by These Presents, that we, The Farm-

ers' Loan and Trust Company as principal, and Jacob Furth and A. B. Stewart, as sureties, are held and firmly bound unto the said Peter G. Longworth in the full and just sum of six thousand (\$6000) dollars, to be paid to the said petitioner, Peter G. Longworth, his certain attorneys, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our successors, and assigns, heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this 20th day of January, 1896.

Whereas, lately, at a Circuit Court of the United States, for the District of Washington, Northern Division, in a suit pending in said court, between The Farmers' Loan and Trust Company, complainant, The Northern Pacific Railroad Company and Andrew F. Burleigh, receiver, defendants, and said Peter G. Longworth, Richard A. Bellinger and Michael Raskey, petitioners, an order or decree was rendered, directing the said Andrew F. Burleigh, as receiver, to pay to the said petitioner, Peter G. Longworth, certain amounts of money in his custody as receiver and the said complainant, The Farmers' Loan and Trust Company having obtained an appeal and filed a copy thereof in the Clerk's office of the said court to reverse the said order or decree in the aforesaid suit or proceeding, directing the payment to said petitioner, Peter G. Longworth, of said money, and a citation directed to the said petitioner, Peter G. Longworth, citing and admonishing him to be and appear at a certain session of the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in said circuit, on the ——— day of February next.

Now, therefore, the condition of the above obligation is such that if the complainant, The Farmers' Loan and Trust Company, shall prosecute said appeal to effect and answer all damages and costs if it shall fail to make the said plea good, then the above obligation to be void, otherwise to remain in full force and effect.

FARMERS' LOAN AND TRUST

COMPANY,

[Seal]

By Maurice McMicken,

Its Att'y in Fact.

JACOB FURTH,

[Seal]

A. B. STEWART.

[Seal]

Signed, sealed and delivered in presence of:

M. L. Sylvester,

H. J. Ramsey.

Taken and subscribed before me this 20th day of January, 1896.

[Seal]

JAMES KIEFER,

Commissioner of the Circuit Court of the United States
for the District of Washington.

Approved by

C. H. HANFORD,

Judge.

United States of America, }
District of Washington, } ss.
County of King. }

Jacob Furth and A. B. Stewart, of the county of King, in the State of Washington, the sureties named in the foregoing bond, being each for himself duly sworn, deposes and says, that he is a resident and a freeholder in the District of Washington, and is worth at least the sum of

six thousand (\$6000) dollars, over and above all just debts and liabilities, exclusive of property exempt from execution, that he is not an officer of this or any other court in said district.

JACOB FURTH,
A. B. STEWART.

Subscribed and sworn to before me this 20th day of January, 1896.

JAMES KIEFER,
Commissioner of the Circuit Court of the United States,
for the District of Washington.

[Endorsed]: Bond on Appeal. Filed Jan. 20, 1896, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By E. A. Colvin, Deputy.

In the Circuit Court of the United States, for the District of Washington, Northern Division.

In Equity.

THE FARMERS' LOAN AND TRUST
COMPANY, a Corporation of the
State of New York,
Complainant,
vs.
NORTHERN PACIFIC RAILROAD
COMPANY and ANDREW F. BUR-
LEIGH, as Receiver of The Northern
Pacific R. R. Co.,
Defendants.

No. 337.

Bond on Appeal to Michael Raskey and Wife.

In the matter of the Petition of Peter G. Longworth, Richard A. Bellinger and Michael Raskey.

Know All Men by These Presents, that we, The Farm-

ers' Loan and Trust Company as principal, and Jacob Furth and A. B. Stewart, as sureties, are held and firmly bound unto the said Michael Raskey and Annie Raskey, his wife, in the full and just sum of one thousand (\$1000) dollars, to be paid to the said petitioners, Michael Raskey and Annie Raskey, his wife, their certain attorneys, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our successors, and assigns, heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this 20th day of January, 1896.

Whereas, lately, at a Circuit Court of the United States, for the District of Washington, Northern Division, in a suit pending in said court, between The Farmers' Loan and Trust Company, complainant, The Northern Pacific Railroad Company and Andrew F. Burleigh, receiver, defendants, and said Peter G. Longworth, Richard A. Bellinger and Michael Raskey, petitioners, an order or decree was rendered, directing the said Andrew F. Burleigh, as receiver, to pay to the said petitioners, Michael Raskey and Annie Raskey, his wife, certain amounts of money in custody as receiver and the said complainant, The Farmers' Loan and Trust Company having obtained an appeal and filed a copy thereof in the Clerk's office of the said court to reverse the said order or decree in the aforesaid suit or proceeding, directing the payment to said petitioners, Michael Raskey and Annie Raskey, his wife, of said money, and a citation directed to the said petitioners, Michael Raskey and Annie Raskey, his wife, citing and admonishing them to be and appear at a certain session of the United

States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in said circuit, on the —— day of February next.

Now, therefore, the condition of the above obligation is such that if the complainant, The Farmers' Loan and Trust Company, shall prosecute said appeal to effect and answer all damages and costs if it shall fail to make the said plea good, then the above obligation to be void, otherwise to remain in full force and effect.

FARMERS' LOAN AND TRUST

COMPANY, [Seal]

By Maurice McMicken,

Its Att'y in Fact.

JACOB FURTH, [Seal]

A. B. STEWART. [Seal]

Signed, sealed and delivered in presence of:

M. L. Sylvester,

H. J. Ramsey.

Taken and subscribed before me this 20th day of January, 1896.

[Seal]

JAMES KIEFER,

Commissioner of the Circuit Court of the United States for the District of Washington.

Approved by

C. H. HANFORD,

Judge.

United States of America,)
District of Washington,) ss.
County of King.)

Jacob Furth and A. B. Stewart, of the county of King, in the State of Washington, the sureties named in the fore-

going bond, being each for himself duly sworn, deposes and says, that he is a resident and a freeholder in the District of Washington, and is worth at least the sum of one thousand (\$1000) dollars over and above all just debts and liabilities, exclusive of property exempt from execution; that he is not an officer of this or any other court in said district.

JACOB FURTH,
A. B. STEWART.

Subscribed and sworn to before me this 20th day of January, 1896.

[Seal] JAMES KIEFER,
Commissioner of the Circuit Court of the United States,
for the District of Washington.

[Endorsed]: Bond on Appeal. Filed Jan. 20, 1896, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By E. A. Colvin, Deputy.

In the Circuit Court of the United States, for the District of Washington, Northern Division.

In Equity.

THE FARMERS' LOAN AND TRUST COMPANY, a Corporation of the State of New York,	Complainant,
vs.	
NORTHERN PACIFIC RAILROAD COMPANY and ANDREW F. BUR- LEIGH, as Receiver of The Northern Pacific R. R. Co.,	Defendants.

No. 337.

Bond on Appeal to Richard A. Bellinger.

In the matter of the Petition of Peter G. Longworth, Richard A. Bellinger and Michael Raskey.

Know All Men by These Presents, that we, The Farmers' Loan and Trust Company as principal, and Jacob Furth and A. B. Stewart, as sureties, are held and firmly bound unto the said Richard A. Bellinger in the full and just sum of three thousand (\$3000) dollars, to be paid to the said petitioner, Richard A. Bellinger, his certain attorneys, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our successors, and assigns, heirs, executors, and administrators, jointly and severally by these presents.

Scaled with our seals and dated this 20th day of January, 1896.

Whereas, lately, at a Circuit Court of the United States, for the District of Washington, Northern Division, in a

suit pending in said court, between The Farmers' Loan and Trust Company, complainant, The Northern Pacific Railroad Company and Andrew F. Burleigh, receiver, defendants and said Peter G. Longworth, Richard Bellinger and Michael Raskey, petitioners, an order or decree was rendered, directing the said Andrew F. Burleigh, as receiver to pay to the said petitioner, Richard A. Bellinger, certain amounts of money in his custody as receiver and the said complainant, The Farmers' Loan and Trust Company having obtained an appeal and filed a copy thereof in the Clerk's office of the said court to reverse the said order or decree in the aforesaid suit or proceeding, directing the payment to said petitioner, Richard A. Bellinger, of said money, and a citation directed to the said petitioner, Richard A. Bellinger, citing and admonishing him to be and appear at a certain session of the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in said circuit, on the ——— day of February next.

Now, therefore, the condition of the above obligation is such that if the complainant, The Farmers' Loan and Trust Company, shall prosecute said appeal to effect and answer all damages and costs if it shall fail to make the said plea good, then the above obligation to be void, otherwise to remain in full force and effect.

FARMERS' LOAN AND TRUST

COMPANY, [Seal]

By Maurice McMicken,
Its Att'y in Fact.

JACOB FURTH, [Seal]

A. B. STEWART. [Seal]

Signed, sealed and delivered in presence of:

M. L. Sylvester,
H. J. Ramsey.

Taken and subscribed before me this 20th day of January, 1896.

[Seal] JAMES KIEFER,
Commissioner of the Circuit Court of the United States,
for the District of Washington.

Approved by C. H. HANFORD,
Judge.

United States of America,)
District of Washington,) ss.
County of King.)

Jacob Furth and A. B. Stewart, of the county of King, in the State of Washington, the sureties named in the foregoing bond, being each for himself duly sworn, deposes and says, that he is a resident and a freeholder in the District of Washington, and is worth at least the sum of three thousand (\$3000) dollars over and above all just debts and liabilities, exclusive of property exempt from execution; that he is not an officer of this or any other court in said district.

JACOB FURTH,
A. B. STEWART.

Subscribed and sworn to before me this 20th day of January, 1896.

[Seal] JAMES KIEFER,
Commissioner of the Circuit Court of the United States,
for the District of Washington.

[Endorsed]: Bond on Appeal. Filed Jan. 20, 1896, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By E. A. Colvin, Deputy.

United States Circuit Court of Appeals for the Ninth Circuit.

<p>THE FARMERS' LOAN AND TRUST COMPANY, a Corporation of the State of New York,</p>	Complainant,	}	No. 337.
vs.			
<p>NORTHERN PACIFIC RAILROAD COMPANY and ANDREW F. BUR- LEIGH, as Receiver of The Northern Pacific R. R. Co.,</p>	Defendants.		

Citation.

United States of America, }
Ninth Judicial Circuit. } ss.

In the matter of the Petition of Peter G. Longworth, Richard A. Bellinger, and Michael Raskey.

To Peter G. Longworth, Michael Raskey and Annie Raskey, his wife, and R. A. Bellinger:

You and each of you are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in said circuit, on the within thirty days after the date of this citation next, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States, for the District of Washington, Northern

Division, wherein The Farmers' Loan and Trust Company is complainant and appellant and you are petitioners and appellees, to show cause, if any there be, why the order or decree made and entered in said cause on the 18th of December, 1895, to the prejudice of appellant, directing the payment of the amount of certain judgments in your favor, respectively, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, this 20th day of January, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of America the one hundred and twentieth.

[Seal]

C. H. HANFORD,

U. S. District Judge.

Copy of within citation on appeal received and due service of same acknowledged this 21st day of January, 1896.

JAMES HAMILTON LEWIS,

STRATTON, LEWIS & GILMAN,

Solicitors for Petitioners, Peter G. Longworth, Richard A.

Bellinger, Michael Raskey and Annie Raskey, his Wife.

*In the Circuit Court of the United States, for the District
of Washington, Northern Division, Ninth Judicial
Circuit.*

<p>THE FARMERS' LOAN AND TRUST COMPANY, a Corporation of the State of New York,</p>	}	Complainant,
vs.		
<p>NORTHERN PACIFIC RAILROAD COMPANY and ANDREW F. BUR- LEIGH, as Receiver of The Northern Pacific R. R. Co.,</p>	}	Defendants.
		No. 337.

Clerk's Certificate.

In the matter of the Petition of Peter G. Longworth,
Richard A. Bellinger and Michael Raskey.

United States of America, }
District of Washington. } ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the
United States, for the District of Washington, hereby cer-
tify the foregoing forty-four (44) typewritten pages, num-
bered from one (1) to forty-four (44) inclusive, to be a full,
true and correct transcript of the record on appeal to the
United States Circuit Court of Appeals, wherein The
Farmers' Loan and Trust Company, complainant, is ap-
pellant, and Peter G. Longworth, Richard A. Bellinger
and Michael Raskey, petitioners, are appellees, and

I further certify that the cost of preparing and certify-

ing the said transcript on appeal amounts to the sum of twenty-three and 30-100 dollars (\$23.30,) and that the same has been paid to me by Messrs. Struve, Allen, Hughes & McMicken, attorneys and solicitors for said complainant and appellant.

Witness my hand and seal of said Circuit Court at Seattle, this 14th day of March, A. D., 1896.

[Seal]

A. REEVES AYRES, Clerk,
By R. M. Hopkins, Deputy Clerk.

[Endorsed]: No. 288. In the United States Circuit Court of Appeals, for the Ninth Circuit. The Farmers' Loan and Trust Company, Appellants, vs. Peter G. Longworth, et al. Transcript of Record. Appeal from the United States Circuit Court, District of Washington, Northern Division.

Filed March 19, 1896.

F. D. MONCKTON,
Clerk.

*In the Circuit Court of the United States, for the District of
Washington, Northern Division.*

THE FARMERS' LOAN AND TRUST
COMPANY, a Corporation of the
State of New York,
Complainant,
vs.
NORTHERN PACIFIC RAILROAD
COMPANY, ET AL., and ANDREW
F. BURLEIGH, as Receiver of the
Northern Pacific Railroad Company,
Defendants.

JOHN B. ALLEN, Solicitor for Complainant.

J. M. ASHTON, Solicitor for Receiver.

STRATTON, LEWIS & GILMAN, Solicitors for Petitioners.

Opinion.

In the matter of the several claims of the intervening petitioners, R. A. Bellinger, Peter G. Longworth and Michael Raskey, founded upon judgments of this Court in their favor, against the Northern Pacific Railroad Company, an order was made by this Court more than one year ago, directing the receivers to pay the sums due to each, respectively, out of the funds in their hands, or in case of their inability for want of sufficient funds to make the payments within thirty days, to issue receivers' certificates. That order was afterwards suspended, pending a hearing upon an application made by the Farmers' Loan and Trust Company to have the same vacated.

The Trust Company has filed an answer denying the preferential character of each of the claims, and the questions at issue were argued and submitted, and have been held under advisement for a considerable time.

I have held this matter under advisement until now, for the reason that it has been exceedingly difficult for me to determine the questions at issue in a manner satisfactory to myself. Having read all the adjudged cases which

have been brought to my attention which seem to bear upon the questions, I must acknowledge that the weight of authority is opposed to the allowance out of the trust funds in the hands of the receivers of a railroad, of claims founded upon judgments against the railroad corporation, for torts, yet every time I have attempted to make a decision in line with the majority of adjudged cases, my own mind has revolted. I have not found any decision of the Supreme Court exactly in point, but the general principles laid down in *Fosdick vs. Schall*, 99 U. S. 235, 236; *Miltenberger vs. Logansport Railway Co.*, 106 U. S. 286-314; and *Union Trust Co. vs. Illinois Midland Railway Co.*, 117 U. S. 434-481, are properly applicable. Those cases have not been overruled by any subsequent decision of the Supreme Court, and they established the general proposition that the debts of a railroad corporation, for necessary operating expenses, created while its property is mortgaged, are entitled to rank as preferred debts, having priority over the mortgage, when in a court of equity it becomes necessary to marshal the assets of the corporation, and to apply the income or proceeds of the property to satisfy the claims of creditors.

I have stated my views in general, in the decision recently made in this case, in ordering payment of the O'Brien judgment, and it is not necessary for me to go over the ground again at this time, I merely wish to announce that in allowing the claims of the petitioners herein, I base my decision entirely upon the proposition that these judgments are founded upon liabilities necessarily incurred in operation of the railroad by the corporation, and the same having been rendered by this Court after the appointment of the receivers, they are entitled to be paid as other current operating expenses; and I expressly hold in opposition to the argument of counsel for the petitioners, that the mortgages represented by the Farmers' Loan and Trust Company are invalid in this State as to the personal property of the corporation, because of non-

compliance with the statute of Washington Territory relating to chattel mortgages, prescribing certain formalities in the execution and recording of such mortgages, and declaring that without such formality, chattel mortgages are void as to creditors, subsequent incumbrancers and purchasers. These mortgages were authorized by an act of congress and were executed and recorded in compliance with that act, therefore, no legislation by the Territory of Washington could impair the validity thereof.

At this time, the receiver has funds on hand sufficient to pay these claims, and it is not necessary for the Court to allow further time, nor to issue receivers' certificates. I direct that the former order, requiring the receivers to pay these claims, be now modified so as to direct the receiver to pay the principal of each claim, in cash, and costs, on or before the 31st day of December, 1895. Interest will not be allowed.

C. H. HANFORD,
Judge.

In the Circuit Court of the United States, for the District of Washington, Northern Division, Ninth Judicial Circuit.

THE FARMERS' LOAN AND TRUST
COMPANY, a Corporation of the
State of New York,

Complainant,

vs.

NORTHERN PACIFIC RAILROAD
COMPANY, ET AL., and ANDREW
F. BURLEIGH, as Receiver of the
Northern Pacific Railroad Company,

Defendants.

R. A. BELLINGER, PETER G. LONG-
WORTH and MICHAEL RASKEY,

Petitioners.

No. 337.

Certificate.

United States of America, }
 District of Washington. } ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States, for the District of Washington, do hereby certify the foregoing three (3) typewritten pages numbered from one to three (3) inclusive, to be a full, true and correct copy of the opinion of the Court in re petition of R. A. Bellinger, Peter G. Longworth and Michael Raskey, filed in the above-entitled cause on the 18th day of December, 1895. And I further certify that the said opinion was through inadvertence omitted from the transcript heretofore forwarded to the United States Circuit Court of Appeals, in the case of *The Farmers' Loan and Trust Company*, a corporation of the State of New York, Complainant, vs. *Northern Pacific Railroad Company*, et al., and *Andrew F. Burleigh*, as Receiver of the *Northern Pacific Railroad Company*, Defendants, *R. A. Bellinger*, *Peter G. Longworth* and *Michael Raskey*, Petitioners.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 28th day of April A. D. 1896.

[Seal]

A. REEVES AYERS,

Clerk of the Circuit Court for the District of Washington.

By R. M. Hopkins, Deputy Clerk.

[Endorsed]: No. 288. In the Circuit Court of the United States for the District of Washington. *Farmers' Loan and Trust Co. vs. N. P. R. R. Co. et al.* Certified Copy. Opinion.

Filed May 1, 1896.

F. D. MONCKTON,

Clerk U. S. Circuit Court of Appeals, for the Ninth Circuit.